



INTERIOR BOARD OF INDIAN APPEALS

Central New York Fair Business Association, Citizens Equal Rights Alliance,
Assemblyman David R. Townsend, Oneida County Legislators Michael Hennessy
and D. Chad Davis, and Melvin Phillips v. Associate Deputy Secretary of the Interior;
Deputy Secretary of the Interior; and Eastern Regional Director, Bureau of Indian Affairs

47 IBIA 113 (06/13/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

CENTRAL NEW YORK FAIR)	Order Docketing and Dismissing
BUSINESS ASSOCIATION,)	Appeal
CITIZENS EQUAL RIGHTS)	
ALLIANCE, ASSEMBLYMAN)	
DAVID R. TOWNSEND, ONEIDA)	
COUNTY LEGISLATORS)	
MICHAEL HENNESSY and)	
D. CHAD DAVIS, AND)	
MELVIN PHILLIPS,)	
Appellants,)	Docket No. IBIA 08-95-A
)	
v.)	
)	
ASSOCIATE DEPUTY SECRETARY)	
OF THE INTERIOR; DEPUTY)	
SECRETARY OF THE INTERIOR;)	
AND EASTERN REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellees.)	June 13, 2008

On June 10, 2008, the Board of Indian Appeals (Board) received a notice of appeal from the Central New York Fair Business Association, the Citizens Equal Rights Alliance, New York State Assemblyman David R. Townsend, Oneida County Legislators Michael Hennessy and D. Chad Davis, and Melvin Phillips (Appellants),¹ seeking review of a Record of Decision (ROD) signed on May 20, 2008. The ROD announced the decision of the Department of the Interior (Department) to acquire, in trust for the Oneida Indian Nation of New York (Nation), under the authority of 25 U.S.C. § 465, approximately 13,003.89 acres of land located in Oneida and Madison Counties, New York. The land is

¹ The Central New York Fair Business Association and Citizens Equal Rights Alliance are identified as citizen group corporations organized to protect the interests of their members. Melvin Phillips is identified as a full-blooded Oneida Indian of the Orchard party who resides on State reserved land pursuant to the Treaty of 1788.

presently owned by the Nation. The ROD was signed by P. Lynn Scarlett, Deputy Secretary of the Interior (Deputy Secretary), and James E. Cason, Associate Deputy Secretary of the Interior (Associate Deputy Secretary), and states that by those signatures, “the Department indicates its final decision,” as described in the ROD, to acquire the 13,003.89 acres in trust for the Nation. The Board docketed but dismisses this appeal because we do not have jurisdiction to review the decision by the Deputy Secretary and the Associate Deputy Secretary.

The Board’s jurisdiction is limited to the authority vested in it by regulation or otherwise delegated to it by the Secretary of the Interior. *See* 43 C.F.R. § 4.1(b)(2); *County of Amador v. Associate Deputy Secretary of the Interior*, 44 IBIA 4 (2006); *Standing Rock Sioux Tribe v. Acting Assistant Secretary - Indian Affairs*, 41 IBIA 188 (2005), and cases cited therein. No regulation or delegation grants the Board authority to review a decision by the Deputy Secretary or the Associate Deputy Secretary. Nor has this matter been referred to the Board by the Secretary for review. *See* 43 C.F.R. § 4.330(a). In fact — although not necessary to preclude the Board from reviewing the decision — the ROD expressly states that by the signatures of the Deputy Secretary and the Associate Deputy Secretary, the Department indicates its “final decision” to implement the action selected in the ROD.²

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

² Appellants also name the Eastern Regional Director, Bureau of Indian Affairs as an “appellee,” but the only action — issuance of the ROD — for which they seek review was taken by the Deputy Secretary and the Associate Deputy Secretary.